Supreme Court, U.S.
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No. 95-1464

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SARA B. HAZEN,
Petitioner,
v.
EVELYN B. COOPER, ET AL.,
Respondents.

On Petition for Writ Of Certiorari To The Court of Appeals for The Fourteenth Supreme Judicial District of Texas

REPLY BRIEF TO OPPOSITION BRIEF OF LIDDELL, SAPP, ET AL. AND REPLY TO OPPOSITION BRIEF OF MESSRS. ROTHENBERG & GUNN, PRESUMABLY ON BEHALF OF EVELYN B. COOPER, ET AL.

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14 pp

QUESTION PRESENTED

Whether the practice of a judge receiving political campaign contributions from litigants and/or their attorneys creates an appearance of impropriety under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States requiring the judge to be recused.

LIST OF ALL PARTIES TO THE PROCEEDINGS

Petitioner:

SARA B. HAZEN, Individually and as Temporary Administrator of the Estate of Rose D. Bashara, Deceased

Respondents:

EVELYN B. COOPER, Individually and as Trustee of the Evelyn B. Cooper and Melburn G. Cooper Trust

MELBURN G. COOPER, Individually and as Trustee of the Evelyn B. Cooper and Melburn G. Cooper Trust

ISABELL TRADD, Individually and as Guardian of Rose D. Bashara, N.C.M.

EVELYN B. COOPER AND MELBURN G. COOPER TRUST

WILLIAM AMAIMO, Individually and as Guardian of the Estate of Rose D. Bashara, N.C.M.

FIRST CITY NATIONAL BANK now FEDERAL DEPOSIT INSURANCE CORPORATION

AMERICAN BANK AND TRUST

LIDDELL, SAPP, ZIVLEY AND LABOON

BRUCE LABOON

ROBERT BROWN

GRACE GREENE

EARNEST G. CALDWELL

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INTRODUCTION

Sara B. Hazen respectfully files this reply brief to answer some of the misstatements of fact in opposition briefs. In doing so, petitioner replies first to those in the brief of Liddell, Sapp, et al. (hereinafter designated as Opposition Brief 1), and then those in the Opposition Brief filed by Messrs. Rothenberg & Gunn (hereinafter designated as Opposition Brief 2).

REPLY TO OPPOSITION BRIEF 1

Opposition Brief 1 on pages 2, 4 and 5 asserts that petitioner did nothing while the case was pending, that no trial setting was ever requested, and never offered any excuse for her lack of formal discovery.

Petitioner replies that, on page 5 of the Petition, the affidavit of petitioner's attorney describes some of the activities petitioner engaged in during this period. Additionally, a description of these activities appears on pages 15 and 16 of the Petition. The petitioner filed a motion for status conference referred to therein so as to arrange for a trial of the case in the event a settlement of same was not effected during said conference. During this conference the petitioner was assured that the case would be tried.

Petitioner also, it should be noted, filed her motion to be appointed permanent administrator of the estate pursuant to § 178(b) of the Texas Probate Code, Pet. App. I, 37a. This motion was ignored by the trial court which, instead of hearing and determining said motion, elected to dismiss the case for want of prosecution. To this day, no executor or executrix or a permanent administrator has been appointed by this court in respect to this estate, even though the first temporary administrator reported to the court that the estate consisted of at least $50,000. He noted that the attorneys for some of the respondents had reported that the estate income would be minimal. He further stated: "How do we know it is minimal unless an accounting is, in fact, required?" Pet. 12.

Further, at the hearing on the motion to dismiss for want of prosecution, the trial court had evidence before it that showed payments in excess of $388,000 had been made

by one of the large oil companies to respondents and this was income only from a small field in Fort Bend County. Pet. 12.

Opposition Brief 1 on pages 3, 6, 7 and 8 alleges that these were small campaign contributions from lawyers made over a period of several years, that petitioner complained only after the case was dismissed for want of prosecution, and that petitioner has never explained why she delayed in reviewing the public records of the judge's financing of the campaign until after the case was dismissed. Also, it alleges that the wheels of justice would obviously grind to a halt if no judge was entitled to consider and rule in a case in which any of the parties or attorneys had contributed to his campaign.

Petitioner replies that it was only at this point in time, after the dismissal for want of prosecution, that the petitioner became aware of the fact of the existence of the campaign contributions, by not only lawyers, but also litigants in this case. Opposition Brief 1 criticizes petitioner for not having delved into this matter sooner. Isn't a person justified in assuming that the trial judge is a man of honor and integrity who would not have received significant campaign contributions from the person's opponents? Is it necessary for a person to always investigate a trial judge's background? These were not small contributions made over a period of several years. They were made to put this trial judge in office and they were not minor. He used the office facilities of Liddell, Sapp, et al. from which to operate his campaign for office. One of the members of Liddell, Sapp and an attorney for this firm guaranteed payment of the $30,000 bank loan in order to finance his campaign. It is these same people that he would be looking to when re-election time came around.

The argument that the wheels of justice would grind to a halt is a cavalier response to these facts. These respondents would put the re-election of a particular judge over the Constitutional right of a party to have an impartial judge try the case.

REPLY TO OPPOSITION BRIEF 2

Opposition Brief 2 does not state on whose behalf the opposition brief was filed. Petitioner assumes it was filed on behalf of Evelyn B. Cooper and those related to her.

On pages 1 and 4, the authors of Opposition Brief 2 allege that this is a will contest which petitioner brought against her sisters. The authors for some reason have not investigated the facts of this case because it is not a will contest and never was a will contest. They obviously have not done their homework. The nature of this suit is set forth at the top of page 7 of the Petition. The suit was instituted in April 1987, nine years ago at the time of this writing.

Opposition Brief 2 on page 3 points out that the contributions were given in 1986 approximately six years prior to the time the order of dismissal of the lawsuit for want of prosecution was signed and asked what is the likelihood that the trial judge would even remember these campaign contributions.

Our reply in the first place is that the bias exhibited by the trial judge commenced in 1987 when this lawsuit was filed. The lawsuit was filed by Sara Hazen not only as temporary administrator, but also individually, and she was forbidden to conduct any discovery in either capacity. The likelihood of the trial judge remembering the fact that Liddell, Sapp helped him get into office by making available to him the use of their office facilities to conduct his

campaign and one of its members and one of its attorneys guaranteed his $30,000 loan--how could any judge forget that within a period of six years!

Opposition Brief 2 on page 4 states that Ms. Cooper and Ms. Tradd did not contribute to the judge's campaign. However, their attorneys, both past and present, contributed to the campaign. Ms. Cooper and Ms. Tradd are not the only respondents, and the fact that they did not contribute does not bear upon the Constitutional question.

Opposition Brief 2 on page 5 alleges that petitioner never attempted to perform discovery and never sought permission from the court to do so. A response to this is contained in the forepart of this reply brief. We additionally allege that petitioner's attorney vigorously sought the right to conduct discovery at the time the initial order barring discovery was entered. Likewise, at the time the subsequent order was entered, at a time when the reason for denial of discovery advanced by the trial judge upon entry of the first order had vanished, petitioner's attorney sought the right to discovery. The trial judge refused it and continued the ban on discovery, obviously conveying the idea that discovery would not be permitted regardless of how many times it was requested, even though the order stated otherwise.

Opposition Brief 2 on page 5 states that the petitioner never requested that the case be set for trial. Petitioner has responded to this statement herein earlier.

Opposition Brief 2 on page 6 alleges that the trial judge was in no way involved in the decision as to whether he would be recused because of campaign contributions.

In reply to this, petitioner points out that the writers again have obviously not done their homework and are

misleading this Honorable Court. Rule 18a of the Texas Rules of Civil Procedure, in subsection (c), clearly states as follows:

> "Prior to any further proceedings in the case, the judge shall either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear such motion."

It is obvious that the initial decision to recuse or not was with the trial judge, and, as we have alleged, he failed to do so.

Opposition Brief 2 on page 8 alleges that petitioner did not present the Constitutional question in the state court brief. It refers to page 39 of that brief alleging that it cites only a state due process clause.

The reference to page 39 of that brief had nothing to do with the Constitutional question we are referring to in these briefs, and what the opposition has referred to was a quotation in a case involving another point of error unrelated to the Constitutional question we're talking about. The quotation from the opinion referred to a state constitutional provision relating to that unrelated question.

Again, the Opposition Brief 2 is attempting to mislead this Honorable Court. Petitioner's brief in the state court, pages 28 through 37, raises the Constitutional question, and, likewise, in petitioner's reply brief in that appellate court the matter is treated on pages 12 through 25.

In Opposition Brief 2 on page 10 the writers attack the basis of the allegations, saying that they have not been supported and not proven and that perhaps the question was not timely presented.

Petitioner points out that her motion for recusal is Pet. App. C, 16a. It should be noted that in paragraph I the Constitutional question is raised. It should also be noted that this motion is sworn to by petitioner's attorney, Paul J. Smith, page 27a. The content of the motion has not been contested. As to the matter of timeliness, this question was raised in the appellate court and it ruled that it was timely under Texas law, Pet. App. A, 9a.

Opposition Brief 2 on page 12 attempts to confuse the issue before the court. We had argued in the state court that the state rule should be interpreted as the federal rule is in *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988). However, we think we made it clear that, by the nature of the question presented and the citations to cases of this Honorable Court on pages 23 and 24 of the Petition, these cases control the Due Process question raised. Under these decisions, we think it clear that her Constitutional right to a trial before an impartial tribunal was denied to her by the state courts.

CONCLUSION

Petitioner's writ of certiorari should be granted.

Respectfully submitted,

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